IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 339 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

REGIONAL AUTHORITY & DISCIPLINARY AUTHORITY

Versus

NAVINCHANDRA P JOSHI

Appearance:

1. Appeal from Order No. 339 of 1999

DR MAHESH THAKAR for Petitioners No. 1-2

MS MONA N TRIVEDI for Petitioners No. 1-2

MR PR THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 17/10/2001

CAV JUDGEMENT

The appellants have challenged in this appeal the impugned order dated 7.5.1999 passed by the learned Civil Judge (S.D.), Vadodara below Ex.5 in Special Civil Suit No.314 of 1999 filed by the respondent-plaintiff whereby

the learned judge allowed the application Ex.5 and confirmed ex-parte ad-interim relief granted earlier in favour of the respondent-plaintiff in terms of para 14(A) of the application. While granting this relief the appellant-bank is restrained from proceeding further with the departmental inquiry against the respondent-plaintiff who was its employee working as Manager of satellite branch of Pavagadh till the final disposal of criminal case filed against the respondent-plaintiff.

The respondent-plaintiff was serving at Pavagadh Office as In-Charge (S.O.C. Satellite Office) Halol Branch, Halol. He was the only person posted at Pavagadh office, therefore, he has to discharge the duties of clerk to manager. On 20.7.1997, the appellant-bank lodged FIR before CBI Police Station against the respondent-plaintiff and other accused for committing fraud with the bank to the tune of Rs.1.42 crores. Accordingly, FIR was registered against respondent-plaintiff and others for various offences punishable under Sections 120B, 420, 465, 471 and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The respondent-plaintiff was placed under suspension and served with the charge sheet dated 11.2.1999 for misappropriation, corruption and fraud played with the bank and the public money in crores of rupees. The respondent was superannuated from service on 31.5.1999, therefore, just before few days of his retirement he approached the learned Civil Judge (S.D.), Baroda by way of Special Civil Suit No.314 of 1999 on 1.4.1999 with an application Ex.5 praying that the bank be restrained from further proceedings with the departmental inquiry in pursuance to the charge sheet dated 11.2.1999 submitted against it on the ground that the bank wants to proceed against him on the same charges for which the criminal case is registered against him with CBI.

Learned Judge without assigning any reasons passed an ex-parte order in favour of the respondent-plaintiff in terms of para 14(A) of his application on 1.4.1999 while issuing show cause notice to the bank. Thus, the learned Judge, in clear violation of provisions of Order 39 Rule 2 of Code of Civil Procedure passed the mandatory ad-interim injunction in favour of the respondent-plaintiff. After hearing the bank the learned Judge by his impugned order dated 7.5.1999 confirmed ex-parte ad-interim order granted earlier by him and allowed the application Ex.5. This order is challenged by the appellant-bank by way of this appeal.

On behalf of appellant-bank it was vehemently submitted by Dr.Thakar that the learned Judge has committed grave error in passing the ex-parte ad-interim order without assigning any reason and later on confirming interim relief without properly considering the fact that the charges are not similar to the allegations made against the respondent-plaintiff in the FIR filed before the CBI. He also submitted that when the offences are committed by the respondent-plaintiff then the criminal complaint has to be filed by the bank and accordingly it was filed. He submitted that in the criminal complaint, the respondent-plaintiff is not the only person but many other persons are also there as accused and one of them is absconding. He, therefore, submitted that if the bank is not allowed to proceed further with the respondent in the departmental inquiry on the ground that the criminal case is pending against the respondent-plaintiff then, with the lapse of time no witnesses will be available in the departmental inquiry because ordinarily it takes years in final disposal of the criminal cases before the criminal court, which would not be in the interest of justice. He further submitted that when there are serious charges against the respondent-plaintiff of committing fraud with the bank and misappropriating funds running into crores of rupees then the bank should be allowed to proceed further with the departmental inquiry. He submitted that the respondent will be at liberty to defend him in the departmental inquiry and he can be punished only if he is found guilty at the end of the departmental proceedings. If he proves his innocence then he can certainly be exonerated. Relying upon several Hon'ble Supreme Court judgments he submitted that mere pendency of the criminal case should not come in the way of the bank to proceed further by way of departmental proceedings against its employee.

As against that learned counsel Shri Thakkar for the respondent-plaintiff submitted that the charges levelled against the respondent-plaintiff are identical to the charges levelled against him in the criminal complaint, therefore, it will cause prejudice to the plaintiff in his defence if departmental proceedings is permitted to be proceed further. According to him when the criminal case is filed against him then burden heavily lies upon the prosecution to prove its case against the respondent-plaintiff beyond reasonable doubt and in criminal case he is not required to open his mouth. Whereas, in departmental proceedings he has to disclose his defence which may come in his way during the

trial of criminal case. In support of his submission he has placed reliance upon Hon'ble Supreme Court judgment reported in (i) 1993(3) SC 376, (ii) AIR 1865 SC 155, and Division Bench of this court reported in 1991(1) GLH (UJ) 2. He has also submitted that when complicated questions of law and facts are involved in the matter and charges are of grave and serious nature levelled against the delinquent, then on the same sets of facts the bank should not be allowed to proceed with the departmental inquiry. Lastly he submitted that after service of the charge sheet in 1999 the respondent-plaintiff is superannuated from service in May, 1999, therefore, bank is not going to suffer any financial loss by paying subsistence allowance. He also submitted that if the respondent-plaintiff is found guilty by the competent court then on conviction his services can very well be terminated by bank without holding any inquiry. He also submitted that when the learned Judge has exercised his discretion in favour of the plaintiff and restrained defendant-Bank from further proceedings with the departmental inquiry then this court should not interfere with such discretionary order.

I have carefully considered the rival submissions made by learned counsel for the parties. I have also carefully gone through the judgment of the Hon'ble Supreme Court as well as of this court cited by the learned counsel for the parties in support of the submissions. Having carefully gone through the same I must say that neither the Hon'ble Supreme Court nor this court has laid down that whenever there is a criminal case registered against the person then he cannot be dealt by way of departmental proceedings. It depends upon facts of each case. In a given case court may think it proper to restrain the employer from proceeding further with the departmental inquiry when the criminal case is filed. If it is satisfied that prejudice is likely to be caused and in a given case court may not interfere.

Coming to the facts of the instant case it prima facie appears that the respondent-plaintiff was the only person posted at Pavagadh office of the bank and the allegation made against him is that he has committed serious misconduct and committed fraud of crores of rupees against the bank. The appellant-bank wanted to proceed against the respondent-plaintiff on the following grounds :-

(i) The plaintiff committed gross error in not issuing NRI deposit and issuing

domestic term deposit, which was a clear violation of the guidelines of the Bank and Reserve Bank of India.

(ii) The plaintiff collected account payee draft favouring Shri D.C. Patel and A.D. Patel for a third party namely Bombay Engineering and Training Company. The amount was credited in the account without waiting for actual realisation.

(iii) The plaintiff instead of issuing Foreign Currency Non-Resident deposit in name of Shri A.D. Patel, D.C. Patel, P.I.Patel, M.D.Patel and N.M.Patel, converted the same in Indian rupees. This resulted in huge exchange loss to the bank.

(iv) The plaintiff received cheque of Rs.25 lacs drawn on Allahabad Bank, Gandhinagar for issuing FDR in the name of Gujarat Panchayat Varg Vikas Nigam, Gandhinagar and unauthorisedly credited the amount in the account of Bombay Engineering & Trading Company.

(v) That the plaintiff received cheques worth Rs.70 lacs for issuing FDR in the name of Sainik Welfare Resettlement Board and credited the amount in current account of Bombay Engineering and Trading Company which was withdrawn from the account.

(vi) The plaintiff received cheques of Rs.59,30,753/= from Executive Engineer, ECP, GIDC, Vadodara for issuing FDR which he unauthorisedly credited in the account of Bombay Engineering and Trading Company.

(vii) The plaintiff had given credit of Rs.25 lacs in the account of Bombay Engineering and Trading Company wrongfully without receiving the proceeds and open FDR in name of Gujarat Panchayat Varg Vikas Nigam.

(viii) The plaintiff unauthroisedly issued 3 pay orders of Rs.10 lacs each on 26.2.1997 without obtaining any application from or actually receiving any funds or passing

any voucher."

The above charges cannot be said to be similar to the charges levelled against him in the criminal case. Having close scrutiny of the averments made in the FIR and the charges levelled against him in the departmental proceedings it cannot be said that the charges are borrowed from the FIR from the same sets of facts.

There is lot of substance in the submission made by Thakkar that the respondent-plaintiff quietly go on accepting subsisting allowance from 1997 to 1999 till the submission of the charge sheet while remaining under suspension and it is only when he was served with charge sheet then in the last days of his retirement he approached civil court by way of suit and obtained ex-parte ad-interim injunction without reasons.

On peculiar facts and circumstances of the case, I am fully satisfied that no prejudice is going to be caused to the respondent-plaintiff if he is dealt with in departmental inquiry by the bank. If he is innocent he can certainly prove his innocence even in the departmental inquiry. Dr.Thakar was right in submitting that when there are other accused along with respondent-plaintiff in CBI case and one of them is absconding, then the criminal case is not going to be over soon and it is definitely going to take long time. The respondent-plaintiff has retired from service, therefore, it is desirable that during his existence the departmental inquiry is over. If the bank is not allowed to be proceeded further with the departmental inquiry then after lapse of some years it will not be able to get any evidence and the witnesses also may not be available. When the person in the rank of officer of the bank against whom serious allegations are made for misappropriation of crores of rupees then in my considered opinion the departmental proceedings cannot be stayed till final disposal of the criminal case filed against him. It is a case of public money, therefore, I am of the considered opinion that the learned Judge was wrong in coming to the conclusion that the respondent-plaintiff had prima facie case and that balance of convenience was also in his favour and the irreparable loss would be caused to him. In the instant case, the plaintiff has miserably failed to prove any prima facie case in his favour. The balance of convenience was never in his favour and no irreparable loss is going to be caused if the bank is permitted to

proceed with the departmental proceedings.

Before parting, I must state that in this type of cases where there is a fraud played upon the financial institutions like banks, in such type of cases, courts should be slow in granting injunction.

In view of the above discussion, this appeal is allowed. Impugned judgment and order dated 7.5.1999 passed by the learned Civil Judge (S.D.), Baroda below Ex.5 in Special Civil Suit No.314 of 1999 confirming his earlier ex-parte ad-interim order dated 9.4.1999 is hereby quashed and set aside. The appellant bank is permitted to proceed further with the respondent-plaintiff by way of departmental inquiry and complete the same as early as possible because the respondent has already crossed the age of 60.

(B.J.Shethna, J.)

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